

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Thomas Pelzer, #311633, a/k/a)	
Thomas Lee Pelzer,)	C/A No. 2:09-3109-MBS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
Stephen T. Plexico,)	
)	
Defendant.)	
_____)	

Plaintiff Thomas Pelzer is an inmate in custody of the South Carolina Department of Corrections who is housed at the Perry Correctional Institution in Pelzer, South Carolina. Plaintiff, proceeding pro se, filed a complaint pursuant to 42 U.S.C. § 1983 on December 1, 2009. Plaintiff alleges that Defendant Stephen T. Plexico, a public defender, violated Plaintiff's constitutional rights in various respects.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Robert S. Carr for pretrial handling. On December 21, 2009, the Magistrate Judge issued a Report and Recommendation in which he determined that Plaintiff cannot proceed against Defendant because Defendant did not act under color of state law. See Gomez v. Toledo, 446 U.S. 635, 640 (1980) (noting that, to state a cause of action under § 1983, a plaintiff must allege that (1) the defendant deprived him of a federal right, and (2) the defendant acted under color of state law). Accordingly, the Magistrate Judge recommended that the action be dismissed without prejudice and without issuance and service of process. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has carefully reviewed the record and adopts the Report and Recommendation. Plaintiff's complaint is dismissed, without prejudice and without issuance and service of process.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

January 19, 2010.

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.